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Nos. 95-1709 and 95-1751

In the Supreme Court of the United States

OCTOBER TERM, 1995

TEMPLETON COAL COMPANY, INC., *et al.*,
Petitioners,
v.
DONNA E. SHALALA, *et al.*

DAVON, INC.,
Petitioner,
v.
DONNA E. SHALALA, *et al.*

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR RESPONDENTS THE UMWA COMBINED BENEFIT FUND AND ITS TRUSTEES IN OPPOSITION

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QUESTION PRESENTED

In the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act"), 26 U.S.C. §§ 9701 *et seq.*, Congress determined that each employer that voluntarily participated in the collectively bargained multiemployer health care system for active and retired miners in the coal industry and whose former employees were still receiving benefits from that system, should, beginning on February 1, 1993, pay the future health care costs of the retired employees and dependents assigned to that employer by the Secretary of Health and Human Services under the criteria set forth in the statute.

The question presented is whether the Coal Act, as applied to petitioners, violates the Due Process and Takings Clauses of the Fifth Amendment.

LIST OF PARTIES

The captions of the petitions list all the parties to the cases in the courts below. The petition in No. 95-1709 misspells the name of respondent Gail R. Wilensky. The petition in No. 95-1751 misspells the name of respondent Elliot A. Segal.

After this litigation began, the functions assigned to the Secretary under the Coal Act were transferred by Congress to the Commissioner of Social Security. *See* Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, §§ 105(a)(2)(A), 108(h)(9)(A), 108 Stat. 1472, 1487-88 (1994).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-33a) is reported at 75 F.3d 1114.[1] The opinion of the district court (Pet. App. 34a-83a) is reported at 882 F. Supp. 799. An earlier opinion of the district court (Pet. App. 84a-109a) is reported at 855 F. Supp. 990. The district court's order in No. 95-1709 (Pet. App. 110a-112a) is not reported.

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[1] "Pet. App." refers to the appendix in No. 95-1709.

STATUTE INVOLVED

This case concerns the constitutionality of the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act"), Pub. L. No. 102-456, 106 Stat. 2776, 3036-3056. Neither petition reproduces the statute in full. The petition in No. 95-1709 omits 26 U.S.C. § 9722, as well as the Coal Act amendments to the Surface Mining Control and Reclamation Act of 1977 (the "Surface Mining Act"), which are codified in principal part in 30 U.S.C. § 1232(h). The petition in No. 95-1751 also omits the amendments to the Surface Mining Act, as well as the prefatory provisions of the Coal Act, which set forth the Act's title and Congress's findings and declarations of policy. Accordingly, the entire statute, as it appears in the Statutes at Large, is reproduced in the appendix to this brief.

STATEMENT OF THE CASE

Both petitions present an incomplete and misleading account of the origins of the Coal Act, the problem that Congress sought to address, the nature of the legislative solution, and the rationale for the congressional action. Similarly, both petitions omit any description of the reasoning of the courts below, both of which (like all of the other federal courts that have rendered judgment on the Coal Act) rejected petitioners' arguments and sustained the statute in its entirety.

To put the Coal Act and the present dispute in its proper context, we first review the nearly 50-year history of the UMWA Health & Retirement Funds, petitioners' substantial participation in those Funds, and the financial crisis that afflicted the Funds, as petitioners and more and more employers like them discontinued their participation and left their former employees behind, either to receive no retiree health care at all or to obtain such care at the expense of other employers. We then turn to the Coal Act itself and its legislative history, explaining the provisions of the statute, the reasons for the congressional

intervention, and the basis for Congress's conclusion that the problem could not be solved through private collective bargaining. Finally, we summarize the decisions below and the grounds on which petitioners' constitutional challenges were rejected.

A. The UMWA Multiemployer Health And Medical Funds

For more than forty years, the United Mine Workers of America ("UMWA") and the Bituminous Coal Operators' Association, Inc. ("BCOA"), a multiemployer bargaining association representing various companies in the coal industry, have entered into a series of collective bargaining agreements known as National Bituminous Coal Wage Agreements ("NBCWAs"). Each NBCWA required signatory coal operators to pay contributions to finance health benefits for both active and retired miners and their dependents through multiemployer benefit plans. The origin of these plans was an historic agreement between the federal government and the UMWA.

1. *The Establishment of the UMWA Multiemployer Health Care System*

The first coal industry multiemployer benefit plan was created in an agreement between the UMWA and the United States, in settlement of a national strike during which the federal government had seized virtually all of the nation's coal mines. The dispute began when, during collective bargaining negotiations between the UMWA and the bituminous coal operators, the UMWA proposed that the parties create a health and welfare fund for its members. The employers rejected the proposal and a strike ensued. In an effort to end the strike and avoid further disruption in the coal and other industries, President Truman issued Executive Order No. 9728 on May 21, 1946, directing Secretary of the Interior Julius Krug to seize the mines. The order also authorized Secretary Krug to negotiate with the UMWA for changes in the miners' terms and conditions of employment.

Those negotiations culminated in what is known as the Krug-Lewis Agreement. The Krug-Lewis Agreement created a multiemployer benefit plan called the United Mine Workers of America Welfare and Retirement Fund (the "1946 W&R Fund"). The 1946 W&R Fund was intended to provide various health and retirement benefits to UMWA miners and their dependents and survivors. In addition, under the Krug-Lewis Agreement, the federal government committed to conduct a comprehensive study of medical facilities and medical care in the nation's coal mining areas. At the request of Secretary Krug, that survey was conducted, and a report prepared, by Rear Admiral Joel T. Boone of the United States Navy Medical Corps.

In 1947, the UMWA and coal operators created a new multiemployer benefit plan known as the 1947 UMWA Welfare and Retirement Fund (the "1947 W&R Fund"), which succeeded to the assets and liabilities of the 1946 W&R Fund. Like its predecessor, the 1947 W&R Fund was created to make payments to UMWA miners and their dependents for a broad range of health and retirement benefits. By the end of December 1948, the 1947 W&R Fund had provided medical benefits and pensions to more than 250,000 coal miners and their families in 26 states.

In 1950, the UMWA and coal operators created a new multiemployer fund called the United Mine Workers of America Welfare and Retirement Fund of 1950 (the "1950 W&R Fund"). The 1950 W&R Fund succeeded to the assets and liabilities of the 1947 W&R Fund. Like the 1946 W&R Fund and the 1947 W&R Fund, the 1950 W&R Fund was intended to provide pension and health benefits to UMWA miners and their dependents.[2]

[2] Employer contributions to the 1950 W&R Fund were not tax deductible until 1954, when Congress amended the Internal Revenue Code. Congress wrote the amendment in such a way that it effec-

In July 1950, building upon the 1947 W&R Fund's medical program, the 1950 W&R Fund introduced a comprehensive hospital and medical care program. The program included the payment of unlimited hospitalization and in-hospital medical care for the following classes of beneficiaries: working and unemployed miners; working and unemployed miners' wives and dependent children under age 18; retired miners and their wives; widows of deceased miners; and relatives of deceased miners who cared for the miners' orphaned children. The program's hospital and medical care coverage for miners' widows terminated only upon their remarriage.

During the 28 years of their existence, from 1946 to 1974, the 1950 W&R Fund and its predecessors provided comprehensive health care coverage to UMWA active and retired miners and their families. As such, the Funds had a significant impact on the economies of the bituminous coal producing states and the UMWA mining families that lived in those states. During this period, the 1950 W&R Fund and its predecessors collected approximately $3.9 billion in contributions from signatory coal operators, and paid approximately $1.5 billion in hospital and medical care benefits, $283 million in survivors and other related benefits, and approximately $2 billion in pension benefits.[3]

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tively applied only to the 1950 W&R Fund. *See* 26 U.S.C. § 404(c) (1954). In recommending the amendment, the Senate Finance Committee emphasized that the fund was "established during a period of Government operation" and was "the result of an agreement between employee representatives and the United States Government during a period of Government seizure and operation of most of the facilities of the industry." S. Rep. No. 1622, 83d Cong., 2d Sess. 56 (1954), *reprinted in* 1954 U.S.C.C.A.N. 4623, 4687. *See also* H.R. Rep. No. 2543, 83d Cong., 2d Sess. 43 (1954), *reprinted in* 1954 U.S.C.C.A.N. 5280, 5303.

[3] Over the years, the 1950 W&R Fund from time to time increased, decreased, or suspended certain benefits. For example, on January 15, 1954, the 1950 W&R Fund limited the duration of

2. The Establishment of the UMWA 1950 and 1974 Benefit Trusts

The 1950 W&R Fund continued to provide health benefits through the term of the 1971 NBCWA, which ended in 1974. Under the 1974 NBCWA, however, partly in response to the enactment of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.* ("ERISA"), BCOA and the UMWA agreed to divide the 1950 W&R Fund into four separate multiemployer plans.[4] Two of the four new plans provided pension benefits to retired miners. The other two plans provided health benefits to retired miners. One of the health benefit plans, known as the United Mine Workers of America 1950 Benefit Plan and Trust (the "1950 Benefit Trust"), provided health benefits to UMWA miners who retired before 1976. The second plan, known as the United Mine Workers of America 1974 Benefit Plan and Trust (the "1974 Benefit Trust"), provided

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hospital and medical coverage for widows, dependent children, and orphans of deceased miners to the twelve-month period during which a survivors benefit was paid on their behalf. On April 11, 1960, the 1950 W&R Fund imposed hospital and medical care eligibility restrictions for unemployed miners and miners disabled as a result of work-related injuries. On January 19, 1967, the eligibility for widows and dependent survivors of both working and retired miners was partially restored. Finally, on November 13, 1973, the 1950 W&R Fund restored the eligibility for hospital and medical care benefits for widows of miners killed in mine accidents and miners disabled as a result of work-related injuries. As had been the case before such eligibility was first limited in 1954, these beneficiaries' eligibility for hospital and medical benefits was restored for their lives or, in the case of surviving spouses, until they remarried.

[4] In 1974, Congress again enacted special provisions in the Internal Revenue Code to alleviate potential tax burdens that otherwise would have accompanied the restructuring of the 1950 W&R Fund. The rationale supporting these special provisions was the same as the one that supported the original enactment of Section 404(c) of the Internal Revenue Code twenty years earlier.

health benefits for miners who retired in 1976 or thereafter as well as for the active work force.[5]

In 1978, the UMWA and BCOA restructured the industry's contractual health care system to address employer concerns that the multiemployer approach was unraveling as fewer companies elected to participate in the multiemployer plans and an increasing burden was placed on a shrinking base of signatory operators. The 1978 NBCWA continued the multiemployer approach for providing health benefits to persons who retired before January 1, 1976, but it provided that persons who retired on or after that date would receive their health benefits from single-employer plans maintained by the retirees' "last NBCWA signatory employer." The 1974 Benefit Trust was retained to provide health benefits on a multiemployer basis to those persons who retired on or after January 1, 1976 and whose last signatory employers were no longer in business.

B. The Crisis That Threatened The UMWA Trusts' Beneficiaries And The Efforts To Resolve It

During the past decade, the problems that led to the 1978 restructuring of the collectively bargained multiemployer health care system became more acute and threatened the 1950 and 1974 Benefit Trusts' ability to continue providing health benefits to their beneficiaries. The uncertainty of continued health benefits for active and retired UMWA miners led to substantial labor strife in the nation's bituminous coal mining regions and threatened the economies of several coal producing states.[6]

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[5] The UMWA multiemployer health and medical benefit plans, *i.e.*, the 1946 W&R Fund, 1947 W&R Fund, 1950 W&R Fund, and the 1950 and 1974 Benefit Trusts, are collectively referred to herein as the "UMWA Trusts."

[6] *See, e.g.*, 136 Cong. Rec. S12312 (statement of Senator Rockefeller) (daily ed. Oct. 2, 1989) ("the [UMWA health] funds contribute many millions of dollars to the West Virginia economy and

One of the most serious of these labor disputes was a ten-month strike by the UMWA against the Pittston Coal Company and its related entities. When collective bargaining failed to resolve the dispute, Secretary of Labor Elizabeth Dole intervened and appointed former Secretary of Labor William J. Usery as mediator. As part of the eventual settlement of the dispute, Secretary Dole established a special advisory commission called the Secretary of Labor's Advisory Commission on United Mine Workers of America Retiree Health Benefits (the "Coal Commission"). The Secretary authorized the Coal Commission to analyze the retiree health care crisis and recommend a solution. Former Secretary Usery was appointed Chair of the Coal Commission.

In November 1990, the Coal Commission submitted its findings and recommendations to Secretary Dole in a report entitled "Coal Commission Report: A Report to the Secretary of Labor and the American People." [7] In analyzing the health care crisis in the coal industry, the Coal Commission stated that ensuring the continued provision of health benefits to UMWA retirees and their dependents should be the primary objective of any proposed solution:

> Retired coal miners have legitimate expectations of health care benefits for life; that was the promise they received during their working lives and that is how they planned their retirement years. That commitment should be honored. But today those expectations and commitments are in jeopardy.

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sustain the efforts of many health care practitioners and organizations. If allowed to continue unchecked, the financial difficulties in the UMWA health funds could cripple health care delivery in West Virginia and in coal counties of states like Alabama, Arkansas, Colorado, Illinois, Indiana, Kentucky, Ohio, Pennsylvania, and Virginia").

[7] A copy of the Coal Commission Report has been lodged with the Clerk of this Court.

Coal Commission Report at 1. Recognizing the historical origins of the UMWA Trusts, the Coal Commission observed:

> The medical care delivery system that has evolved is as much a creature of government as it is of the collective bargaining process. There is a line running from the original Boone Report to the present system. In a way, the original Krug-Lewis agreement predisposed if not predetermined the system that evolved.

Id. at 29. The Coal Commission identified three developments, the combination of which "has left the Funds, which were created to provide retired coal miners and their families with one of the finest health care programs in the nation, in a financial crisis." *Id.* at 2.

First, the Coal Commission found that "the number of coal companies making contributions to the Funds has declined significantly." Coal Commission Report at 2.[8] Second, it recognized the dramatic increase in the cost of health care between 1950 and 1990, stating that "[i]n the past 10 years alone, the total cost of [annual] health care benefits paid by the Funds has doubled from $117.4 million to $245.3 million." *Id.* Finally, the Coal Commission noted the "steady increase in the number of orphaned retirees whose employers have either gone out of business or no longer provide health care benefits." *Id.* In light of these facts and its finding that the 1950 and 1974 Benefit Trusts' funding bases were declining faster than their beneficiary populations, the Coal Commission predicted that the Ben-

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[8] The Coal Commission found that, while companies contributing to the UMWA multiemployer health benefit system in 1950 represented 80 percent of the coal produced in the nation, "by 1990, companies making contributions to the [UMWA Benefit Trusts] account[ed] for only 30 percent of national coal production." Coal Commission Report at 2.

efit Trusts would have a combined estimated deficit of $300 million by 1993. *Id.* at 3.

The Coal Commission recognized that the collective bargaining process was inadequate to provide a long-term solution to the health care crisis. Coal Commission Report at 3. The Commission therefore recommended two statutory approaches. Under the first approach, the Commission called for the creation of two new funds: (1) a quasi-governmental corporation financed by an industry-wide tax on all coal operators to finance the health care of UMWA orphan retirees; and (2) a private multiemployer fund financed by signatories to the 1978 and later NBCWAs to provide health care to UMWA retirees whose last employer remained in business. *Id.* at 61-64. The second approach called for the creation of a single, private multiemployer plan to provide health benefits to UMWA retirees in the 1950 and 1974 Benefit Trusts, including the orphan retirees. *Id.* at 65-69. To produce the revenue that the first approach would have generated through an industry-wide tax, the second approach contained a financing scheme that imposed liability not just upon employers that signed the 1978 or a later NBCWA, but upon *all* employers and their related business entities that were, at one time, signatory to one or more NBCWAs:

> Instead of imposing a new tax on all coal operators and establishing an agency of the federal government, *this plan seeks additional revenues from a broadened base of current and past signatories to the contracts,* establishing and providing revenues for the Benefit Funds. Past obligations would be defined as those arising from firms once signatory who may be identified through a chain of succession to a current operator.

Id. at 65 (emphasis supplied); *see also id.* at 67.

C. Congressional Solution To The Health Care Crisis In The Coal Industry—The Coal Act

Following the Coal Commission's Report, Congress undertook its own intensive examination of the subject. The Coal Act was the final product of those deliberations.[9] In enacting the Coal Act, Congress found that:

> it is necessary to modify the private health care benefit plan structure for retirees in the coal industry to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees.

App. 1a, *see* 26 U.S.C. § 9701 (historical note). Congress further stated that the policy of the Coal Act is:

> to remedy problems with the provisions and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry . . . [and] to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans.

App. 1a, *see* 26 U.S.C. § 9701 (historical note).

In the Coal Act, Congress created two new trust funds for the provision of health care benefits to retired miners and their dependents. One of those funds, the UMWA Combined Benefit Fund (the "Combined Fund"), is at

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[9] Templeton's assertion that there was no opportunity for public comment on Congress's decision to include pre-1978 signatory operators in the Coal Act financing plan (Templeton Pet. 7 n.5) is unfounded. The Coal Act was the subject of intensive public debate and lobbying in Congress, and numerous coal companies opposing the legislation joined together to press their views on both the Coal Commission and Congress. *See, e.g.*, the several references in the Coal Commission Report to the views of the so-called Private Benefit Alliance. That those efforts were unsuccessful hardly means that there was no opportunity for them to be made.

issue here.[10] As the statute required, the 1950 and 1974 UMWA Benefit Trusts were merged into the Combined Fund as of February 1, 1993. *See* 26 U.S.C. § 9702(a)(2). The Combined Fund now provides health and death benefits to coal industry retirees who, as of July 20, 1992, were eligible to receive, and were receiving, benefits from the UMWA 1950 or 1974 Benefit Trusts. 26 U.S.C. § 9703(a), (b)(1), (e), (f).

In the Coal Act, Congress adopted a financing arrangement for the Combined Fund similar to the alternative approach recommended by the Coal Commission, under which only employers that were signatory to one or more NBCWAs are required to share the burden of financing health benefits for the affected retirees and their dependents. Each employer's annual liability to the Combined Fund is based on the number of beneficiaries that have been assigned to it by the Secretary in accordance with a specific list of priorities set forth in the statute. *See* 26 U.S.C. § 9706. Under the detailed statutory criteria, the Secretary is required to place a higher assignment priority on post-1978 NBCWA signatories than on pre-1978 NBCWA signatories.[11] The Coal Act also assigns to 1988 NBCWA signatories the financial responsibility

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[10] The Coal Act also created the 1992 United Mine Workers of America Benefit Plan ("1992 Plan"), an entirely new entity designed to provide benefits to eligible retirees who are not beneficiaries of the Combined Fund and who are not receiving health care coverage directly from their former employers. *See* 26 U.S.C. § 9712.

[11] Specifically, the assignment rules provide that the Secretary is first required to assign each retiree to the employer that was signatory to the 1978 NBCWA or any subsequent NBCWA and that most recently employed the retiree for at least two years. 26 U.S.C. § 9706(a). If the Secretary cannot assign a retiree to a coal operator pursuant to this first method, she is next required to assign the retiree to the coal operator that was signatory to the 1978 NBCWA or any subsequent NBCWA, and that employed the retiree most recently in the coal industry, without regard to the number of years of employment. Third, if she cannot assign a retiree to a coal operator pursuant to the first two methods, the Secretary is required to assign the retiree to the pre-1978 signatory

for funding the start-up costs of the Combined Fund, 26 U.S.C. § 9704(i)(1)(A), and for eliminating any deficit of the 1950 and 1974 Benefit Trusts as of February 1, 1993, the termination date of the 1988 NBCWA and the date on which the Combined Fund began providing benefits under the statute, 26 U.S.C. § 9704(i)(1)(B).

D. Petitioners' Participation In The UMWA Trusts And Their Role In The Financial Crisis Leading To The Passage Of The Coal Act

During the 1920s, John A. Templeton established several coal mining companies throughout Indiana, including three of the petitioners in No. 95-1709. He first incorporated Templeton in 1920. Thereafter, he incorporated Princeton in 1923, followed by Sherwood-Templeton in 1929. All three companies mined coal primarily in Indiana using UMWA-represented employees. Currently, Sherwood-Templeton and Templeton own mineral rights in numerous coal properties throughout Indiana and "engage[] in the usual activities incident to the ownership of interests in such property." Additionally, Sherwood-Templeton manages approximately 5,500 acres of coal lands in Greene and Sullivan Counties, Indiana. The Templeton companies were all NBCWA signatories and collectively participated in the UMWA Trusts for more than twenty years.[12]

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operator that employed the retiree for the longest period of time. If the Secretary cannot identify any NBCWA signatory operator that remains in business (or that has a "related person" remaining in business) and that formerly employed a particular retiree, the retiree is designated an "unassigned beneficiary," and his health benefits are financed by the statutory transfers of funds from the UMWA 1950 Pension Plan or the Abandoned Mine Reclamation Fund and, if necessary, by the assigned operators' payment of an unassigned beneficiaries premium. *See* 26 U.S.C. §§ 9704(d), 9705, 30 U.S.C. § 1232(h).

[12] Specifically, Princeton was a signatory to the 1950 NBCWA and to the 1951, 1952, 1955, 1956, and 1958 amendments to the 1950 NBCWA. It participated in the UMWA Trusts until 1966. Templeton was a signatory to the 1950 NBCWA and the 1951 and 1952

Berwind, the last of the petitioners in No. 95-1709, has its own extremely complex corporate structure spanning more than 75 years, with bituminous coal mining operations in at least five states. Specifically, Berwind-White Coal Mining Company ("Berwind-White") was incorporated in Pennsylvania in 1915. Berwind-White was a direct signatory to the 1950 NBCWA and the 1951, 1952, 1955, 1956, and 1958 amendments to the 1950 NBCWA. Although it ceased direct mining activities in 1962, in January 1963, as a result of a merger with another coal company, Berwind-White became a 98% shareholder of Reitz Coal Company ("Reitz").[13] Berwind-White continued to engage in coal mining activities through Reitz. Reitz was a signatory to the 1968, 1971, 1974, 1978, and 1981 NBCWAs. It contributed not only to the 1950 W&R Fund but also to the 1950 and 1974 Benefit Trusts. In 1967, Berwind-White changed its name to Berwind Corporation. Berwind is thus the same corporate entity that, directly or indirectly (through its subsidiary Reitz), participated in the UMWA Trusts for nearly 40 years, until at least 1984, when the 1981 NBCWA was terminated.

Davon's predecessor corporation, the New York Coal Company ("New York Coal"), was incorporated in 1902, and was engaged in bituminous coal mining from November 1933 through January 1954. While it was engaged in bituminous coal mining, New York Coal employed UMWA-represented miners and was signatory to the 1950

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amendments to that agreement. Templeton participated in the UMWA Trusts until at least 1954. Sherwood-Templeton was a signatory to the 1950 NBCWA and the 1951, 1952, 1955, 1956, and 1958 amendments thereto. Sherwood-Templeton discontinued its participation in the UMWA Trusts in 1960. Thereafter, in 1967, Templeton acquired a 100% interest in Sherwood-Templeton.

[13] Berwind subsequently acquired the remaining 2% and became the sole shareholder of Reitz. In September 1964, another coal company, New River and Pocahontas Consolidated Coal Company ("New River") merged into Berwind-White.

NBCWA and the 1951 and 1952 amendments thereto. It participated in the UMWA Trusts from their inception in 1946 through January 1954, when New York Coal sold its coal mining assets.

Among the five petitioners, Berwind has by far the largest obligation to the Combined Fund under the Coal Act. In the Secretary's original assignment of Combined Fund beneficiaries in the fall of 1993, Berwind was assigned 914 beneficiaries; no other petitioner was assigned more than 117 beneficiaries. None of these beneficiary assignments is at issue here. The Coal Act (and the Secretary, by implementing regulations) provide a mechanism for challenging the assignment of beneficiaries. *See* 26 U.S.C. § 9706(f); 20 C.F.R. §§ 422.601-607. Judicial review of the Secretary's final administrative determinations following such challenges is available under the Administrative Procedure Act. No such review is involved in these cases.[14]

Although petitioners have varying corporate histories, they all share important factual ties. Specifically, petitioners were all signatories to one or more NBCWAs and therefore reaped the economic benefits not only of the miners' labor but also of the maintenance of a stable available pool of skilled labor, which the UMWA multiemployer health care system encouraged and supported. As NBCWA signatories, petitioners all participated in that health care system. When petitioners ceased to participate in the UMWA Trusts, they stopped paying con-

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[14] Petitioners incorrectly characterize their initial assessments under the Coal Act as first-year premiums. Templeton Pet. 9; Davon Pet. 10. In fact, no assessments could be made until the Combined Fund's second plan year, after the Secretary completed the assignment of beneficiaries under 26 U.S.C. § 9706. Accordingly, the initial assessments (and the amounts reported by petitioners) were the sum of the premiums for the Combined Fund's first plan year (February-September 1993) and second plan year (October 1993-September 1994), and were to be paid in twelve equal monthly installments during the second plan year. *See* 26 U.S.C. § 9704(g).

tributions to the UMWA Trusts. The UMWA Trusts, however, continued to provide comprehensive health care benefits to petitioners' retirees. During the period after petitioners ceased to participate in the UMWA Trusts, and before the Coal Act became effective, these benefits were financed entirely by other coal companies. In light of this background, petitioners' claims that they are strangers to the UMWA Trusts are disingenuous and inaccurate.

E. Petitioners' Constitutional Challenges to the Coal Act

In September and November 1993, petitioners filed these actions, alleging that the Coal Act violates the Due Process and Takings Clauses of the Fifth Amendment. The district court rejected the due process claim, explaining that:

> Plaintiffs have simply failed to show that it was irrational for Congress to determine that operators under the NBCWAs of the 1950s and 1960s remain, at least in some part, responsible for retiree health benefit liabilities. The dispute about when lifetime benefits were promised to retired mine workers, and by whom, is a multisided contest, pitting coal mine operators from different eras against one another, as well as involving present and former mineworkers and their families. A congressional decision to come down on the side of the retirees and their spouses and dependents is not totally void of reason.

Pet. App. 58a. The court likewise rejected petitioners' takings claim, ruling that none of the three factors addressed by this Court in evaluating such claims in *Connolly v. Pension Benefit Guar. Corp.*, 475 U.S. 211 (1986), supports the contention that the Coal Act effects an unconstitutional taking. Pet. App. 80a.

The court of appeals affirmed. The court rejected petitioners' argument that the Coal Act's financing provisions violate due process, emphasizing Congress's deliberative approach in deciding to look to all NBCWA signatories to finance the Combined Fund:

> Congress certainly had several alternatives available to finance the Combined Fund. It could have restricted required contributions to the signatories of the latest NBCWA or, at the other extreme, raised funds from all existing coal companies or from general tax revenues. Congress also had several intermediate alternatives. For example, it could have reached back only to the 1978 NBCWA, which created the "guarantee" and "evergreen" clauses; to the 1974 NBCWA, which created the 1950 and 1974 Trusts; or to the 1950 NBCWA, which created the predecessor of all the trusts. . . . The existence of several such rationales for the Coal Act demonstrates that Congress's decision to reach back to 1950 NBCWA signatories was far from arbitrary.

Pet. App. 18a-19a. The court likewise rejected petitioners' Takings Clause argument, concluding, as the district court had before it, that "all three of the *Connolly* factors demonstrate that the Coal Act does not unconstitutionally take property from plaintiffs without compensation." Pet. App. 32a. In the court's words, "the existence of a proportional financing scheme, the lack of any reasonable expectation that plaintiffs would not be liable under the Coal Act, and the economic character of the Act, which only readjusts the benefits and burdens of economic life, preclude us from finding an unconstitutional taking." *Id.*

ARGUMENT

The decision of the court of appeals is correct, and review by this Court is not warranted. There is simply no unresolved or controversial question of federal constitutional law presented here. Four panels of three courts of appeals (including the decision below) have unqualifiedly upheld the constitutionality of the Coal Act in the face of challenges like petitioners'. *See Blue Diamond Coal Co. v. Secretary of HHS, et al.*, 79 F.3d 516 (6th Cir. 1996), *pet. for rehg. pending* (filed April 29, 1996); *Barrick Gold Exploration, Inc., et al. v. Hudson, et al.*, 47 F.3d 832 (6th Cir.), *cert. denied*, 116 S. Ct. 64

(1995); *LTV Steel Company, Inc., et al. v. Shalala, et al.*, 53 F.3d 478 (2d Cir.), *cert. denied*, 116 S. Ct. 298 (1995).

In addition, several district courts have held that the Coal Act comports fully with the Due Process and Takings Clauses of the Fifth Amendment. *See Holland v. Eagle Coal & Dock Co.*, Civ. No. 2:94-0880 (S.D. W. Va. Mar. 8, 1996); *Holland v. High-Tech Collieries, Inc.*, 911 F. Supp. 1021 (N.D. W. Va. 1996); *Holland v. Imperial Colliery Co.*, Civ. No. 1:94-0793 (S.D. W. Va. Dec. 7, 1995); *Holland v. Milburn Colliery Co.*, Civ. No. 1:94-0801 (S.D. W. Va. Dec. 7, 1995); *Lindsey Coal Mining Co. Liquidating Trust v. Shalala*, 901 F. Supp. 959 (W.D. Pa. 1995), *appeal docketed*, No. 95-3626 (3d Cir. Nov. 16, 1995) (oral argument heard on June 3, 1996); *Holland v. Keenan Trucking Co.*, Civ. No. 2:93-1223 (S.D. W. Va. Mar. 15, 1995), *appeal docketed*, No. 96-1262 (4th Cir. Feb. 21, 1996). *But see Unity Real Estate Co. v. Hudson*, 889 F. Supp. 818 (W.D. Pa. 1995) (order relying on Takings Clause as basis for preliminary injunction in favor of related person alleging inability to pay) (motions for summary judgment pending).

There is no suggestion by petitioners that a conflict among the courts of appeals exists, or is even likely to occur in the future. Oddly, Davon concedes as much, stating that "no conflict is reasonably forthcoming[,]" yet it still urges the Court to grant review because of the alleged risk that other courts will "continue with their overly broad reading and mechanical misapplication of *Connolly*." Davon Pet. 19. It is a rare petition indeed that cites the absence of conflict in the courts below as an affirmative reason for granting review. Here, as in other cases, the agreement among the courts of appeals and district court, and the consistency of the many rulings upholding the Coal Act with the precedents of this Court, militate strongly against further examination of the same

legal arguments that have repeatedly been rejected without dissent in jurisdiction after jurisdiction.

I. THE COURT OF APPEALS CORRECTLY REJECTED PETITIONERS' ARGUMENT THAT A HEIGHTENED STANDARD OF DUE PROCESS REVIEW SHOULD BE APPLIED TO THE COAL ACT

Davon pursued a due process argument in the courts below but has not mentioned it in this Court. The Templeton petitioners continue to advance their "substantive due process" attack, but they do so by urging the Court to abandon the well-established "rational basis" standard for reviewing economic legislation and instead to employ a heightened level of scrutiny that petitioners characterize as the " 'harsh and oppressive' standard." Templeton Pet. 10. Petitioners contend that this standard is appropriate because of the allegedly "retroactive" nature of the Coal Act.

Missing from petitioners' argument is even the slightest acknowledgment of the court of appeals' exhaustive treatment of this subject. *See* Pet. App. 12a-25a. As the court of appeals correctly stated, "Supreme Court precedent could not be more clearly contrary" to petitioners' position. Pet. App. 14a. *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976), squarely held that the rational basis test governs due process review of economic legislation, and that the same standard applies whether the legislation is classified as prospective or retroactive. *Id.* at 14-18 (rejecting due process challenge to Black Lung Benefits Act and explaining that retrospective feature of statute should be sustained as long as it is rational). *See also Pension Benefit Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 730 (1984) (applying rational basis test in rejecting due process challenge to Multi-Employer Pension Plan Amendments Act ("MPPAA"), and stating that constitutional "burden is met simply by showing that the retroactive application of the legislation is itself justified by a rational legislative purpose").

By contrast to the Black Lung Benefits Act and MPPAA, the Coal Act does not require any payments for periods before the statute's enactment. The Coal Act focuses entirely on *future* health care coverage for eligible beneficiaries. It does not upset, or alter in any way, prior contractual obligations concerning the provision of health care benefits during the period before the Combined Fund began providing benefits on February 1, 1993. Indeed, the statute expressly provides that it shall have no effect on pre-February 1, 1993 contractual obligations to provide retiree health benefits. 26 U.S.C. § 9708. The Coal Act thus left prior collective bargaining agreements unchanged and fully effective, recognized that future collective bargaining with an ever-decreasing number of employers could not solve the problems of the UMWA Trusts, and therefore prospectively substituted a new remedial statutory system for the preexisting contractual regime.

Contrary to petitioners' assertions, the Coal Act is not "retroactive" in any constitutionally significant way. As this Court has long held, "[a] statute is not rendered retroactive merely because the facts or requisites upon which its subsequent action depends, or some of them, are drawn from a time antecedent to the enactment." *Reynolds v. United States*, 292 U.S. 443, 449 (1934). The Court recently reaffirmed that "[a] statute does not operate 'retrospectively' merely because it is applied in a case arising from conduct antedating the statute's enactment . . . or upsets expectations based in prior law." *Landgraf v. USI Film Products*, —— U.S. ——, 114 S. Ct. 1483, 1499 (1994) (citations omitted). As the Eighth Circuit has stated, a statute that "imposes liability for the *present and future* conditions resulting from past acts" is not retroactive. *United States v. Northeastern Pharmaceutical and Chemical Co.*, 810 F.2d 726, 741 (8th Cir. 1986) (emphasis in original).

But, even if the Coal Act is considered to be retroactive (notwithstanding the foregoing authority), it survives due process scrutiny because it satisfies the rational basis standard described above. Congress made a rational decision to require all NBCWA signatories that participated in the UMWA Trusts and that are assigned operators under the criteria of 26 U.S.C. § 9706 to shoulder a proportional share of the costs necessary to resolve a health care crisis.

The court of appeals found a host of support for Congress's decision to include pre-1978 signatories (including petitioners) as a source of financing for the Coal Act. The court pointed to the fact that every NBCWA signatory profited from the labor of its retired miners and shared some responsibility for creating the retirees' expectation of lifetime health benefits. Pet. App. 19a-21a. The court also cited practical considerations that supported Congress's rationale, namely, that inclusion of all NBCWA signatories in the Coal Act financing scheme would help to assure adequate funding for the Combined Fund and to avoid economic conflict in the bituminous coal industry. Pet. App. 22a-23a. The court further observed that, even if the Coal Act is thought to be retroactive, petitioners' due process attack "ignore[s] precedent upholding the unlimited retroactive reach of the Comprehensive Environmental Response Compensation and Liability Act ('CERCLA')." Pet. App. 23a. *See, e.g., United States v. Monsanto Company*, 858 F.2d 160, 173-74 (4th Cir. 1988), *cert. denied*, 490 U.S. 1106 (1989).

In sum, the Templeton petitioners have done no more than rehash arguments that the court of appeals explicitly considered and rejected. There is simply no support for petitioners' position that a heightened standard of review should be applied to the Coal Act's financing plan, and there is no basis to conclude that that plan is arbitrary or irrational.

II. THE COURT OF APPEALS CORRECTLY CONCLUDED THAT THE COAL ACT DOES NOT EFFECT AN UNCONSTITUTIONAL TAKING OF PETITIONERS' PROPERTY

At the core of petitioners' Takings Clause argument is their contention that they have no more connection to Coal Act liability than does the general public, that they are legal "strangers" to the Combined Fund and therefore can have no continuing obligation to the Combined Fund. Davon Pet. 2, 3, 5, 12-13, 20-21; Templeton Pet. 3, 8 n.7, 11, 13, 20-22. Davon declares this to be the "significant constitutional difference" between the Coal Act and the cases decided under the MPPAA. Davon Pet. 20; *see Concrete Pipe & Prods. of Cal. v. Construction Laborers Pension Trust*, 508 U.S. 602 (1993); *Connolly*, 475 U.S. 211 (1986).

Petitioners' argument that they have no connection to the Combined Fund is without merit and did not convince the court of appeals:

> [T]he consecutive NBCWAs created a continuous multi-employer scheme for providing health benefits from approximately 1950 to the present. Each of the plaintiffs participated in at least one of the NBCWAs since 1950 and thus had experience with the multi-employer plans. Plaintiffs' argument regarding experience, rather than proportionality, is only persuasive if we accept the premise that the multi-employer plans of 1974 and after are sufficiently different from prior NBCWAs such that experience with the former does not constitute experience with the latter. . . . We find the distinction wholly unpersuasive. Each consecutive NBCWA, including those after 1974, accomplished the same end—to provide benefits to miners until the next NBCWA—using the same means—funding on a multi-employer basis. . . . [E]very coal operator that participated in the multi-employer plans contributed directly to the retirees' legitimate expectations of lifetime benefits. Plaintiffs' "experience with

> the plan[s]" that eventually became the Combined Fund is easily deduced on the facts of this case.

Pet. App. 28a.

As the court explained, while petitioners were signatories to NBCWAs, they contributed to the 1950 W&R Fund and its predecessors. Petitioners' employees accumulated, based on their work for petitioners, service credits that contributed to their entitlement to retiree health benefits from the 1950 W&R Fund and, after 1974, from the 1950 Benefit Trust or the 1974 Benefit Trust. Petitioners' former employees actually received benefits from the UMWA Trusts for years, even though petitioners were not contributing to those Trusts. And when, under the Coal Act, the 1950 and 1974 Benefit Trusts were merged into the Combined Fund, petitioners' former employees became Combined Fund beneficiaries by operation of law.

Petitioners' assertion that they are "strangers" to the legacy of providing health care benefits to retired coal miners and their dependents is insupportable. Petitioners rest their entire argument on the division of the 1950 W&R Fund into four separate funds in 1974, following the enactment of ERISA, which necessitated the separation of pension plans from health benefit plans. It is not relevant in a constitutional sense that the names of the funds changed or that the pension and health components of the funds were segregated into different entities in 1974. As the court of appeals stated, "[n]othing radical happened in 1974." Pet. App. 28a. What is significant is that petitioners actively and voluntarily participated in a system that, for nearly fifty years, provided health care benefits to retired coal miners and their dependents, and through which a legitimate expectation of lifetime benefits was created. That system, although threatened in the 1980s with financial collapse, remained constant in all relevant respects from the time of petitioners' participation until the passage of the Coal Act in 1992. Every entity that signed an NBCWA and contrib-

uted to these funds and had former employees that received health benefits from them is connected to this system.

Moreover, petitioners falsely claim lack of responsibility for the crisis that led to the passage of the Coal Act. *See* Davon Pet. 12; Templeton Pet. 24. Petitioners participated in a system that engendered legitimate expectations of lifetime benefits, and, as the court below said, "[t]heir withdrawal from participation in the trusts helped create the financial crisis that resulted in the Coal Act." Pet. App. 21a. When petitioners decided to cease their participation in the NBCWA and stopped contributing to the 1950 W&R Fund, the costs of providing health benefits for their retirees and dependents were assumed by the remaining signatories to the current and future NBCWAs. When this practice of "dumping" by former NBCWA signatories multiplied years later, the entire system was pressed to the brink of ruin.[15]

The court of appeals correctly concluded that all three Takings Clause factors identified by this Court in *Connolly* and other cases support the validity of the Coal Act. Those three factors are the character of the governmental action, the economic impact of the regulation, and the

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[15] Petitioners claim that Coal Act beneficiaries will not be injured or affected in any way if petitioners prevail in this lawsuit and are relieved of their Coal Act liability. Davon Pet. 11 n.2; Templeton Pet. 13. They argue that if they do not finance the benefits of their assigned beneficiaries, others will do so, and the beneficiaries will receive the same benefits regardless. This argument points up the very problem that created the funding crisis in the first place. Petitioners assume there is an infinite well of resources that can be tapped if they (and all other pre-1974 signatories, according to their logic) are excused from their Coal Act obligations, just as they assumed that they could dump their retirees on the remaining coal operators with impunity before the passage of the Coal Act. It takes little study to realize that every time that an operator ceased to contribute to the UMWA Trusts, the system became weaker, and every time a Coal Act assigned operator ceases contributing to the statutory funds, the Coal Act financing scheme is similarly weakened.

extent to which the regulation has interfered with distinct and reasonable investment-backed expectations. *Connolly*, 475 U.S. at 224-25. *See also Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978).

As this Court has observed, "[i]t is well settled that a 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government, than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 477, 488 n.18 (1987), quoting *Penn Central*, 438 U.S. at 124 (citations omitted). By creating a statutory program to ensure that retired miners will continue to receive health benefits, the Coal Act is a classic example of the latter kind of government regulation.

Davon is wrong in asserting that the result reached below and by the Sixth Circuit in *Blue Diamond* would make the Takings Clause inapplicable in cases involving personal property. *See* Davon Pet. 16-17. Consistent with this Court's decisions, both courts of appeals correctly considered the economic regulatory nature of the Coal Act as a factor in determining whether an unconstitutional taking had occurred. Pet. App. 30a-32a; *accord*, *Blue Diamond*, 79 F.3d at 526. As the court of appeals wrote in this case, "[w]hen [petitioners] and other employers withdrew from the multiemployer plans, they left behind retired miners with legitimate expectations of lifetime benefits. As the number of employers continued to decline, the number of beneficiaries grew, and the result was a seriously underfunded health benefit program." Pet. App. 31a. Congress enacted the Coal Act to address this problem.

The contention of the Templeton petitioners (Pet. 13) that "the law was not passed to benefit former employees" and that the Coal Act "purely benefits the BCOA Operators" is misguided. Petitioners overlook a critical point.

Every NBCWA—not only the NBCWAs and numerous amendments that petitioners signed but the several later NBCWAs, including the NBCWAs of 1974, 1978, 1981, 1984, and 1988—was effective only for a term of years. This was just as true of the NBCWAs that referred to a "Health Services card until death" as it was to the earlier agreements. After each contract was terminated, the continued provision of health care depended on the negotiation and signing of a new national collective bargaining agreement that contained such benefits. But, as the years went by, fewer and fewer employers were willing to sign such an agreement. That is why fewer and fewer employers were carrying the burden of the UMWA Trusts and why both Congress and the Coal Commission concluded that the problem of financing retiree health care in the coal industry could not be solved through the collective bargaining process. In the absence of a legislative solution, BCOA operators and other signatories of the 1988 NBCWA, like petitioners and many other employers before them, could have refused to sign a new collective bargaining agreement in 1993 or thereafter and then claimed that they had no further obligation to fund health care for their own former employees or anyone else's. Petitioners' argument ignores the central question that confronted Congress during its deliberations on the Coal Act: who would pay for retiree health care in the coal industry after termination of the 1988 NBCWA, and in particular who would pay for benefits for the retirees of employers like petitioners, which had long since discontinued their financial support for the UMWA Trusts.

It was to answer this question that Congress chose to assess Coal Act obligations based on a finding of "responsibility" derived from past employment relationships rather than past contractual promises. Nothing in the Takings Clause prevents Congress from assigning greater importance to the question of how many former employees an employer has in the Combined Fund than to the question of which or how many NBCWAs an employer has signed.

Turning to the economic impact factor, the court of appeals properly focused on the question "whether the basis for regulating [petitioners] under the Coal Act—their participation in prior NBCWAs—is proportional to the economic impact caused by the Act." Pet. App. 27a. The court correctly concluded that "[t]he Coal Act's financing scheme is based on proportionality." *Id.* Far from being determined "in a vacuum," petitioners' Coal Act obligations are proportional to petitioners' own participation in the UMWA retiree health care system and to the number of beneficiaries that petitioners helped to add to that system and to the Combined Fund. The Coal Act thus does not involve any disproportionate economic impact that would raise constitutional concern. *See Connolly*, 475 U.S. at 225-226.

In addition, the Coal Act contains provisions that are intended to lessen the economic impact on assigned operators. Indeed, the Coal Act obligations of petitioners and all other assigned operators have been reduced substantially by the three $70,000,000 transfers from the UMWA 1950 Pension Plan to the Combined Fund and by the first of several anticipated transfers from the Abandoned Mine Reclamation Fund. 26 U.S.C. § 9705; 30 U.S.C. § 1232(h). These transfers have eliminated the requirement that assigned operators like petitioners pay any unassigned beneficiaries premiums during the Combined Fund's first four fiscal years. Of course, in the absence of the Coal Act, neither petitioners nor any other assigned operator would have had any legitimate claim to benefit from any of the assets of the 1950 Pension Plan. These assets were held in trust for the exclusive benefit of the Plan's beneficiaries. Likewise, absent the Coal Act, neither petitioners nor any other assigned operator could legitimately have expected to receive any benefit from the Abandoned Mine Reclamation Fund.

Davon's reliance on *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980), is misplaced. Davon Pet. 13-14. Although the taking identified in *Webb's* in-

volved a comparatively small dollar amount, that is not the end of the economic impact inquiry. The effect of regulation is to be measured in relation to the party's experience with the subject matter of the statute at issue. *See Connolly*, 475 U.S. at 226; *Blue Diamond*, 79 F.3d at 525 ("The Supreme Court has stated that the proper inquiry in a multi-employer benefit plan context is whether the plaintiff's liability is proportionate to the plaintiff's experience with the fund at issue.") Under this analysis, even the total elimination of a company's net worth by a government regulation has been held not to violate the Takings Clause. *See Branch v. United States*, 69 F.3d 1571 (Fed. Cir. 1995), *cert. pending*, No. 95-1807 (filed May 6, 1996) (application of cross-guaranty provisions of FIRREA did not constitute taking despite elimination of bank's net worth); *Meriden Trust & Safe Deposit Co. v. Federal Deposit Insurance Corp.*, 62 F.3d 449 (2d Cir. 1995) (same).

Finally, the remaining Takings Clause factor, *i.e.*, the extent to which regulation has interfered with distinct, investment-backed expectations, cannot help petitioners. Petitioners have failed to identify any such expectations. Although petitioners claim that the Coal Act is unconstitutional because it imposes financial obligations that were not foreseeable based on their prior contractual commitments, an alleged lack of foreseeability is not the same thing as interference with distinct, investment-backed expectations. It is well-established that Congress's power to legislate is not confined by the terms of pre-existing private contracts. Pet. App. 30a, *quoting Connolly*, 475 U.S. at 223-24 (citations omitted). Thus, as the district court stated when it denied petitioners' request for a preliminary injunction, "[r]egarding the interference with investment-backed expectations, this court takes the Plaintiffs' argument to be nothing more than a statement that they have gone on to do other things since abandoning coal mining. They have not shown that reliance on the language of the NBCWAs justified an expectation that

they would never have responsibilities to their own retirees or to others retiring from that industry. That argument was laid to rest in *Connolly*." Pet. App. 105a-106a.

Moreover, petitioners' argument that, because the 1950 W&R Fund was a "pay-as-you-go" plan, its beneficiaries could not have had a legitimate expectation of lifetime health care, and that pre-1974 signatory employers therefore have some impermeable constitutional protection against future statutory liability for such care, is untenable. The 1950 W&R Fund and its predecessors provided continuous health benefits to both active and retired coal miners for nearly three decades before the 1974 NBCWA. As the court of appeals explained (Pet. App. 29a), plaintiffs' argument

> ignores the fact that they substantially participated in a system that provided continuous benefits and created legitimate expectations that such provisions would not cease. Any expectation that they could never be held liable for retired miners' health benefits, in light of their participation in the NBCWAs, was not reasonable.

See also UMWA v. Nobel, 720 F. Supp. 1169, 1178 (W.D. Pa. 1989), *aff'd without opinion*, 902 F.2d 1558 (3d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991) (referring to "the 25-year history of lifetime benefits prior to 1974").

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX

Subtitle C—Health Care of Coal Miners

Sec. 19141. Short Title.

This subtitle may be cited as the "Coal Industry Retiree Health Benefit Act of 1992".

Sec. 19142. Findings and Declaration of Policy.

(a) FINDINGS.—The Congress finds that—

(1) the production, transportation, and use of coal substantially affects interstate and foreign commerce and the national public interest; and

(2) in order to secure the stability of interstate commerce, it is necessary to modify the current private health care benefit plan structure for retirees in the coal industry to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees.

(b) STATEMENT OF POLICY.—It is the policy of this subtitle—

(1) to remedy problems with the provision and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry;

(2) to allow for sufficient operating assets for such plans; and

(3) to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans.

Sec. 19143. Coal Industry Health Benefits Program.

(a) IN GENERAL.—The Internal Revenue Code of 1986 is amended by adding at the end the following new subtitle:

"Subtitle J—Coal Industry Health Benefits

"CHAPTER 99—COAL INDUSTRY HEALTH BENEFITS

"Subchapter A—Definitions of General Applicability

"Sec. 9701. Definitions of General Applicability.

"(a) PLANS AND FUNDS.—For purposes of this chapter—

"(1) UMWA BENEFIT PLAN.—

"(A) IN GENERAL.—The term 'UMWA Benefit Plan' means a plan—

"(i) which is described in section 404 (c), or a continuation thereof; and

"(ii) which provides health benefits to retirees and beneficiaries of the industry which maintained the 1950 UMWA Pension Plan.

"(B) 1950 UMWA BENEFIT PLAN.—The term '1950 UMWA Benefit Plan' means a UMWA Benefit Plan, participation in which is substantially limited to individuals who retired before 1976.

"(C) 1974 UMWA BENEFIT PLAN.—The term '1974 UMWA Benefit Plan' means a UMWA Benefit Plan, participation in which is substantially limited to individuals who retired on or after January 1, 1976.

"(2) 1950 UMWA PENSION PLAN.—The term '1950 UMWA Pension Plan' means a pension plan

described in section 404(c) (or a contination thereof), participation in which is substantially limited to individuals who retired before 1976.

"(3) 1974 UMWA PENSION PLAN.—The term '1974 UMWA Pension Plan' means a pension plan described in section 404(c) (or a continuation thereof), participation in which is substantially limited to individuals who retired in 1976 and thereafter.

"(4) 1992 UMWA BENEFIT PLAN.—The term '1992 UMWA Benefit Plan' means the plan referred to in section 9713A.

"(5) COMBINED FUND.—The term 'Combined Fund' means the United Mine Workers of America Combined Benefit Fund established under section 9702.

"(b) AGREEMENTS.—For purposes of this section—

"(1) COAL WAGE AGREEMENT.—The term 'coal wage agreement' means—

"(A) the National Bituminous Coal Wage Agreement, or

"(B) any other agreement entered into between an employer in the coal industry and the United Mine Workers of America that required or requires one or both of the following:

"(i) the provision of health benefits to retirees of such employer, eligibility for which is based on years of service credited under a plan established by the settlors and described in section 404(c) or a continuation of such plan; or

"(ii) contributions to the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, or any predecessor thereof.

"(2) SETTLORS.—The term 'settlors' means the United Mine Workers of America and the Bituminous Coal Operators' Association, Inc. (referred to in this chapter as the 'BCOA').

"(3) NATIONAL BITUMINOUS COAL WAGE AGREEMENT.—The term 'National Bituminous Coal Wage Agreement' means a collective bargaining agreement negotiated by the BCOA and the United Mine Workers of America.

"(c) TERMS RELATING TO OPERATORS.—For purposes of this section—

"(1) SIGNATORY OPERATOR.—The term 'signatory operator' means a person which is or was a signatory to a coal wage agreement.

"(2) RELATED PERSONS.—

"(A) IN GENERAL.—A person shall be considered to be a related person to a signatory operator if that person is—

"(i) a member of the controlled group of corporations (within the meaning of section 52(a)) which includes such signatory operator;

"(ii) a trade or business which is under common control (as determined under section 52(b)) with such signatory operator; or

"(iii) any other person who is identified as having a partnership interest or joint venture with a signatory operator in a business within the coal industry, but only if such business employed eligible beneficiaries, except that this clause shall not apply to a person whose only interest is as a limited partner.

A related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii).

"(B) TIME FOR DETERMINATION.—The relationships described in clauses (i), (ii), and (iii) of subparagraph (A) shall be determined as of July 20, 1992, except that if, on July 20, 1992, a signatory operator is no longer in business, the relaitonships shall be determined as of the time immediately before such operator ceased to be in business.

"(3) 1988 AGREEMENT OPERATOR.—The term '1988 agreement operator' means—

"(A) a signatory operator which was a signatory to the 1988 National Bituminous Coal Wage Agreement,

"(B) an employer in the coal industry which was a signatory to an agreement containing pension and health care contribution and benefit provisions which are the same as those contained in the 1988 National Bituminous Coal Wage Agreement, or

"(C) an employer from which contributions were actually received after 1987 and before July 20, 1992, by the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan in connection with employment in the coal industry during the period covered by the 1988 National Bituminous Coal Wage Agreement.

"(4) LAST SIGNATORY OPERATOR.—The term 'last signatory operator' means, with respect to a coal industry retiree, a signatory operator which was the most recent coal industry employer of such retiree.

"(5) ASSIGNED OPERATOR.—The term 'assigned operator' means, with respect to an eligible benefi-

ciary defined in section 9703(f), the signatory operator to which liability under subchapter B with respect to the beneficiary is assigned under section 9706.

"(6) OPERATORS OF DEPENDENT BENEFICIARIES.—For purposes of this chapter, the signatory operator, last signatory operator, or assigned operator of any eligible beneficiary under this chapter who is a coal industry retiree shall be considered to be the signatory operator, last signatory operator, or assigned operator with respect to any other individual who is an eligible beneficiary under this chapter by reason of a relationship to the retiree.

"(7) BUSINESS.—For purposes of this chapter, a person shall be considered to be in business if such person conducts or derives revenue from any business activity, whether or not in the coal industry.

"(d) ENACTMENT DATE.—For purposes of this chapter, the term enactment date' means the date of the enactment of this chapter.

"Subchapter B—Combined Benefit Fund

"PART I—ESTABLISHMENT AND BENEFITS

"Sec. 9702. Establishment of the United Mine Workers of America Combined Benefit Fund.

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—As soon as practicable (but not later than 60 days) after the enactment date, the persons described in subsection (b) shall designate the individuals to serve as trustees. Such trustees shall create a new private plan to be known as the United Mine Workers of America Combined Benefit Fund.

"(2) MERGER OF RETIREE BENEFIT PLANS.—As of February 1, 1993, the settlors of the 1950 UMWA

Benefit Plan and the 1974 UMWA Benefit Plan shall cause such plans to be merged into the Combined Fund, and such merger shall not be treated as an employer withdrawal for purposes of any 1988 coal wage agreement.

"(3) TREATMENT OF PLAN.—The Combined Fund shall be—

"(A) a plan described in section 302(c)(5) of the Labor Management Relations Act, 1947 (29 U.S.C. 186(c)(5)),

"(B) an employee welfare benefit plan within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)), and

"(C) a multiemployer plan within the meaning of section 3(37) of such Act (29 U.S.C. 1002(37)).

"(4) TAX TREATMENT.—For purposes of this title, the Combined Fund and any related trust shall be treated as an organization exempt from tax under section 501(a).

"(b) BOARD OF TRUSTEES.—

"(1) IN GENERAL.—For purposes of subsection (a), the board of trustees for the Combined Fund shall be appointed as follows:

"(A) one individual who represents employers in the coal mining industry shall be designated by the BCOA;

"(B) one individual shall be designated by the three employers, other than 1988 agreement operators, who have been assigned the greatest number of eligible beneficiaries under section 9706;

"(C) two individuals designated by the United Mine Workers of America; and

"(D) three persons selected by the persons appointed under subparagraphs (A), (B), and (C).

"(2) SUCCESSOR TRUSTEES.—Any successor trustee shall be appointed in the same manner as the trustee being succeeded. The plan establishing the Combined Fund shall provide for the removal of trustees.

"(3) SPECIAL RULES.—

"(A) BCOA.—If the BCOA ceases to exist, any trustee or successor under paragraph (1)(A) shall be designated by the 3 employers who were members of the BCOA on the enactment date and who have been assigned the greatest number of eligible beneficiaries under section 9706.

"(B) FORMER SIGNATORIES.—The initial trustee under paragraph (1)(B) shall be designated by the 3 employers, other than 1988 agreement operators, which the records of the 1950 UMWA Benefit Plan and 1974 UMWA Benefit Plan indicate have the greatest number of eligible beneficiaries as of the enactment date, and such trustee and any successor shall serve until November 1, 1993.

"(c) PLAN YEAR.—The first plan year of the Combined Fund shall begin February 1, 1993, and end September 30, 1993. Each succeeding plan year shall begin on October 1 of each calendar year.

"Sec. 9703. Plan Benefits.

"(a) IN GENERAL.—Each eligible beneficiary of the Combined Fund shall receive—

"(1) health benefits described in subsection (b), and

"(2) in the case of an eligible beneficiary described in subsection (f)(1), death benefits coverage described in subsection (c).

"(b) HEALTH BENEFITS.—

"(1) IN GENERAL.—The trustees of the Combined Fund shall provide health care benefits to each eligible beneficiary by enrolling the beneficiary in a health care services plan which undertakes to provide such benefits on a prepaid risk basis. The trustees shall utilize all available plan resources to ensure that, consistent with paragraph (2), the coverage under the managed care system shall to the maximum extent feasible be substantially the same as (and subject to the same limitations of) coverage provided under the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of January 1, 1992.

"(2) PLAN PAYMENT RATES.—

"(A) IN GENERAL.—The trustees of the Combined Fund shall negotiate payment rates with the health care services plans described in paragraph (1) for each plan year which are in amounts which—

"(i) vary as necessary to ensure that beneficiaries in different geographic areas have access to a uniform level of health benefits; and

"(ii) result in aggregate payments for such plan year from the Combined Fund which do not exceed the total premium payments required to be paid to the Combined Fund under section 9704(a) for the

plan year, adjusted as provided in subparagraphs (B) and (C).

"(B) REDUCTIONS.—The amount determined under subparagraph (A)(ii) for any plan year shall be reduced—

"(i) by the aggregate death benefit premiums determined under section 9704(c) for the plan year, and

"(ii) by the amount reserved for plan administration under subsection (d).

"(C) INCREASES.—The amount determined under subparagraph (A)(ii) shall be increased—

"(i) by any reduction in the total premium payments required to be paid under section 9704(a) by reason of transfers described in section 9705,

"(ii) by any carryover to the plan year from any preceding plan year which—

"(I) is derived from amounts described in section 9704(e)(3)(B)(i), and

"(II) the trustees elect to use to pay benefits for the current year, and

"(iii) any interest earned by the Combined Fund which the trustees elect to use to pay benefits for the current plan year.

"(3) QUALIFIED PROVIDERS.—The trusees of the Combined Fund shall not enter into an agreement under paragraph (1) with any provider of services which is of a type which is required to be certified by the Secretary of Health and Human Services when providing services under title XVIII of the Social Security Act unless the provider is so certified.

"(4) EFFECTIVE DATE.—Benefits shall be provided under paragraph (1) on and after February 1, 1993.

"(c) DEATH BENEFITS COVERAGE.—

"(1) IN GENERAL.—The trustees of the Combined Fund shall provide death benefits coverage to each eligible beneficiary described in subsection (f)(1) which is identical to the benefits provided under the 1950 UMWA Pension Plan or 1974 UMWA Pension Plan, whichever is applicable, on July 20, 1992. Such coverage shall be provided on and after February 1, 1993.

"(2) TERMINATION OF COVERAGE.—The 1950 UMWA Pension Plan and the 1974 UMWA Pension Plan shall each be amended to provide that death benefits coverage shall not be provided to eligible beneficiaries on and after February 1, 1993. This paragraph shall not prohibit such plans from subsequently providing death benefits not described in paragraph (1).

"(d) RESERVES FOR ADMINISTRATION.—The trustees of the Combined Fund may reserve for each plan year, for use in payment of the administrative costs of the Combined Fund, an amount not to exceed 5 percent of the premiums to be paid to the Combined Fund under section 9704(a) during the plan year.

"(e) LIMITATION ON ENROLLMENT—The Combined Fund shall not enroll any individual who is not receiving benefits under the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan as of July 20, 1992.

"(f) ELIGIBLE BENEFICIARY.—For purposes of this subchapter, the term 'eligible beneficiary' means an individual who—

"(1) is a coal industry retiree who, on July 20, 1992, was eligible to receive, and receiving, benefits

from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, or

"(2) on such date was eligible to receive, and receiving, benefits in either such plan by reason of a relationship to such retiree.

"PART II—FINANCING

"Sec. 9704. Liability of Assigned Operators.

"(a) ANNUAL PREMIUMS.—Each assigned operator shall pay to the Combined Fund for each plan year beginning on or after February 1, 1993, an annual premium equal to the sum of the following three premiums—

"(1) the health benefit premium determined under subsection (b) for such plan year, plus

"(2) the death benefit premium determined under subsection (c) for such plan year, plus

"(3) the unassigned beneficiaries premium determined under subsection (d) for such plan year.

Any related person with respect to an assigned operator shall be jointly and severally liable for any premium required to be paid by such operator.

"(b) HEALTH BENEFIT PREMIUM.—For purposes of this chapter—

"(1) IN GENERAL.—The health benefit premium for any plan year for any assigned operator shall be an amount equal to the product of the per beneficiary premium for the plan year multiplied by the number of eligible beneficiaries assigned to such operator under section 9706.

"(2) PER BENEFICIARY PREMIUM.—The Secretary of Health and Human Services shall calculate a per beneficiary premium for each plan year beginning on or after February 1, 1993, which is equal to the sum of—

"(A) the amount determined by dividing—

"(i) the aggregate amount of payments from the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for health benefits (less reimbursements but including administrative costs) for the plan year beginning July 1, 1991, for all individuals covered under such plans for such plan year, by

"(ii) the number of such individuals, plus

"(B) the amount determined under subparagraph (A) multiplied by the percentage (if any) by which the medical component of the Consumer Price Index for the calendar year in which the plan year begins exceeds such component for 1992.

"(3) ADJUSTMENTS FOR MEDICARE REDUCTIONS.—If, by reason of a reduction in benefits under title XVIII of the Social Sesurity Act, the level of health benefits under the Combined Fund would be reduced, the trustees of the Combined Fund shall increase the per beneficiary premium for the plan year in which the reduction occurs and each subsequent plan year by the amount necessary to maintain the level of health benefits which would have been provided without such reduction.

"(c) DEATH BENEFIT PREMIUM.—The death benefit premium for any plan year for any assigned operator shall be equal to the applicable percentage of the amount, actuarially determined, which the Combined Fund will be required to pay during the plan year for death benefits coverage described in section 9703(c).

"(d) UNASSIGNED BENEFICIARIES PREMIUM.—The unassigned beneficiaries premium for any plan year for any assigned operator shall be equal to the applicable per-

centage of the product of the per beneficiary premium for the plan year multiplied by the number of eligible beneficiaries who are not assigned under section 9706 to any person for such plan year.

"(e) PREMIUM ACCOUNTS; ADJUSTMENTS.—

"(1) ACCOUNTS.—The trustees of the Combined Fund shall establish and maintain 3 separate accounts for each of the premiums described in subsections (b), (c), and (d). Such accounts shall be credited with the premiums received and debited with expenditures allocable to such premiums.

"(2) ALLOCATIONS.—

"(A) ADMINISTRATIVE EXPENSES.—Administrative costs for any plan year shall be allocated to premium accounts under paragraph (1) on the basis of expenditures (other than administrative costs) from such accounts during the preceding plan year.

"(B) INTEREST.—Interest shall be allocated to the account established for health benefit premiums.

"(3) SHORTFALLS AND SURPLUSES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if, for any plan year, there is a shortfall or surplus in any premium account, the premium for the following plan year for each assigned operator shall be proportionately reduced or increased, whichever is applicable, by the amount of such shortfall or surplus.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to any surplus in the health benefit premium account or the unassigned beneficiaries premium account which is attributable to—

"(i) the excess of the premiums credited to such account for a plan year over the benefits (and administrative costs) debited

to such account for the plan year, but such excess shall only be available for purposes of the carryover described in section 9703(b)(2)(C)(ii) (relating to carryovers of premiums not used to provide benefits), or

"(ii) interest credited under paragraph (2)(B) for the plan year or any preceding plan year.

"(C) NO AUTHORITY FOR INCREASED PAYMENTS.—Nothing in this paragraph shall be construed to allow expenditures for health care benefits for any plan year in excess of the limit under section 9703(b)(2).

"(f) APPLICABLE PERCENTAGE.—For purposes of this section—

"(1) IN GENERAL.—The term 'applicable percentage' means, with respect to any assigned operator, the percentage determined by dividing the number of eligible beneficiaries assigned under section 9706 to such operator by the total number of eligible beneficiaries assigned under section 9706 to all such operators (determined on the basis of assignments as of October 1, 1993).

"(2) ANNUAL ADJUSTMENTS.—In the case of any plan year beginning on or after October 1, 1994, the applicable percentage for any assigned operator shall be redetermined under paragraph (1) by making the following changes to the assignments as of October 1, 1993:

"(A) Such assignments shall be modified to reflect any changes during the period beginning October 1, 1993, and ending on the last day of the preceding plan year pursuant to the appeals process under section 9706(f).

"(B) The total number of assigned eligible beneficiaries shall be reduced by the eligible beneficiaries of assigned operators which (and all related persons with respect to which) had ceased business (within the meaning of section 9701(c)(6)) during the period described in subparagraph (A).

"(g) PAYMENT OF PREMIUMS.—

"(1) IN GENERAL.—The annual premium under subsection (a) for any plan year shall be payable in 12 equal monthly installments, due on the twenty-fifth day of each calendar month in the plan year. In the case of the plan year beginning February 1, 1993, the annual premium under subsection (a) shall be added to such premium for the plan year beginning October 1, 1993.

"(2) DEDUCTIBILITY.—Any premium required by this section shall be deductible without regard to any limitation on deductibility based on the prefunding of health benefits.

"(h) INFORMATION.—The trustees of the Combined Fund shall, not later than 60 days after the enactment date, furnish to the Secretary of Health and Human Services information as to the benefits and covered beneficiaries under the fund, and such other information as the Secretary may require to compute any premium under this section.

"(i) TRANSITION RULES.—

"(1) 1988 AGREEMENT OPERATORS.—

"(A) 1ST YEAR COSTS.—During the plan year of the Combined Fund beginning February 1, 1993, the 1988 agreement operators shall make contributions to the Combined Fund in amounts necessary to pay benefits and administrative costs

of the Combined Fund incurred during such year, reduced by the amount transferred to the Combined Fund under section 9705(a) on February 1, 1993.

"(B) DEFICITS FROM MERGED PLANS.—During the period beginning February 1, 1993, and ending September 30, 1994, the 1988 agreement operators shall make contributions to the Combined Fund as are necessary to pay off the expenses accrued (and remaining unpaid) by the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, reduced by the assets of such plans as of such date.

"(C) FAILURE.—If any 1988 agreement operator fails to meet any obligation under this paragraph, any contributions of such operator to the Combined Fund or any other plan described in section 404(c) shall not be deductible under this title until such time as the failure is corrected.

"(D) PREMIUM REDUCTIONS.—

"(i) 1ST YEAR PAYMENTS.—In the case of a 1988 agreement operator making contributions under subparagraph (A), the premium of such operator under subsection (a) shall be reduced by the amount paid under subparagraph (A) by such operator for the plan year beginning February 1, 1993.

"(ii) DEFICIT PAYMENTS.—In the case a 1988 agreement operator making contributions under subparagraph (B), the premium of such operator under subsection (a) shall be reduced by the amounts which

are paid to the Combined Fund by reason of claims arising in connection with the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, including claims based on the 'evergreen clause' found in the language of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan, and which are allocated to such operator under subparagraph (E).

"(iii) LIMITATION.—Clause (ii) shall not apply to the extent the amounts paid exceed the contributions.

"(iv) PLAN YEARS.—Premiums under subsection (a) shall be reduced for the first plan year for which amounts described in clause (i) or (ii) are available and for any succeeding plan year until such amounts are exhausted.

"(E) ALLOCATIONS OF CONTRIBUTIONS AND REFUNDS.—Contributions under subparagraphs (A) and (B), and premium reductions under subpargraph (D)(ii), shall be made ratably on the basis of aggregate contributions made by such operators under the applicable 1988 coal wage agreements as of January 31, 1993.

"(2) 1ST PLAN YEAR.—In the case of the plan year of the Combined Fund beginning February 1, 1993—

"(A) the premiums under subsections (a)(1) and (a)(3) shall be 67 percent of such premiums without regard to this pargraph, and

"(B) the premiums under subsection (a) shall be paid as provided in subsection (g).

"(3) STARTUP COSTS.—The 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan shall pay the costs of the Combined Fund incurred before February 1, 1993. For purposes of this section, such costs shall be treated as administrative expenses incurred for the plan year beginning February 1, 1993.

"Sec. 9705. Transfers.

"(a) TRANSFER OF ASSETS FROM 1950 UMWA PENSION PLAN.—

"(1) IN GENERAL.—From the funds reserved under paragraph (2), the board of trustees of the 1950 UMWA Pension Plan shall transfer to the Combined Fund—

"(A) $70,000,000 on February 1, 1993,

"(B) $70,000,000 on October 1, 1993, and

("C) $70,000,000 on October 1, 1994.

"(2) RESERVATION.—Immediately upon the enactment date, the board of trustees of the 1950 UMWA Pension Plan shall segregate $210,000,000 from the general assets of the plan. Such funds shall be held in the plan until disbursed pursuant to paragraph (1). Any interest on such funds shall be deposited into the general assets of the 1950 UMWA Pension Plan.

"(3) USE OF FUNDS.—Amounts transferred to the Combined Fund under paragraph (1) shall—

"(A) in the case of the transfer on February 1, 1993, be used to proportionately reduce the premium of each assigned operator under section 9704(a) for the plan year of the Fund beginning February 1, 1993, and

"(B) in the case of any other such transfer, be used to proportionately reduce the unas-

signed beneficiary premium under section 9704 (a)(3) and the death benefit premium under section 9704(a)(2) of each assigned operator for the plan year in which transferred and for any subsequent plan year in which such funds remain available.

Such funds may not be used to pay any amounts required to be paid by the 1988 agreement operators under section 9704(i)(1)(B).

"(4) TAX TREATMENT; VALIDITY OF TRANSFER.—

"(A) NO DEDUCTION.—No deduction shall be allowed under this title with respect to any transfer pursuant to paragraph (1), but such transfer shall not adversely affect the deductibility (under applicable provisions of this title) of contributions previously made by employers, or amounts hereafter contributed by employers, to the 1950 UMWA Pension Plan, the 1950 UMWA Benefit Plan, the 1974 UMWA Pension Plan, the 1974 UMWA Benefit Plan, the 1992 UMWA Benefit Plan, or the Combined Fund.

"(B) OTHER TAX PROVISIONS.—Any transfer pursuant to paragraph (1)—

"(i) shall not be treated as an employer reversion from a qualified plan for purposes of section 4980, and

"(ii) shall not be includible in the gross income of any employer maintaining the 1950 UMWA Pension Plan.

"(5) TREATMENT OF TRANSFER.—Any transfer pursuant to paragraph (1) shall not be deemed to violate, or to be prohibited by, any provision of law, or to cause the settlors, joint board of trustees, employers or any related person to incur or be subject

to liability, taxes, fines, or penalties of any kind whatsoever.

"(b) TRANSFERS FROM ABANDONED MINE RECLAMATION FUND.—

"(1) IN GENERAL.—The Combined Fund shall include any amount transferred to the Fund under section 402(h) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(h)).

"(2) USE OF FUNDS.—Any amount transferred under paragraph (1) for any fiscal year shall be used to proportionately reduce the unassigned beneficiary premium under section 9704(a)(3) of each assigned operator for the plan year in which transferred.

"Sec. 9706. Assignment of Eligible Beneficiaries.

"(a) IN GENERAL.—For purposes of this chapter, the Secretary of Health and Human Services shall, before October 1, 1993, assign each coal industry retiree who is an eligible beneficiary to a signatory operator which (or any related person with respect to which) remains in business in the following order:

"(1) First, to the signatory operator which—

"(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

"(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry for at least 2 years.

"(2) Second, if the retiree is not assigned under pargaraph (1), to the signatory operator which—

"(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

"(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry.

"(3) Third, if the retiree is not assigned under paragraph (1) or (2), to the signatory operator which employed the coal industry retiree in the coal industry for a longer period of time than any other signatory operator prior to the effective date of the 1978 coal wage agreement.

"(b) RULES RELATING TO EMPLOYMENT AND REASSIGNMENT UPON PURCHASE.—For purposes of subsection (a)—

"(1) AGGREGATION RULES.—

"(A) RELATED PERSON.—Any employment of a coal industry retiree in the coal industry by a signatory operator shall be treated as employment by any related persons to such operator.

"(B) CERTAIN EMPLOYMENT DISREGARDED.—Employment with—

"(i) a person which is (and all related persons with respect to which are) no longer in business, or

"(ii) a person during a period during which such person was not a signatory to a coal wage agreement,

shall not be taken into account.

"(2) REASSIGNMENT UPON PURCHASE.—If a person becomes a successor of an assigned operator after the enactment date, the assigned operator may transfer the assignment of an eligible beneficiary under subsection (a) to such successor, and such successor shall be treated as the assigned operator with respect to such eligible beneficiary for purposes

of this chapter. Notwithstanding the preceding sentence, the assigned operator transferring such assignment (and any related person) shall remain the guarantor of the benefits provided to the eligible beneficiary under this chapter. An assigned operator shall notify the trustees of the Combined Fund of any transfer described in this paragraph.

"(c) IDENTIFICATION OF ELIGIBLE BENEFICIARIES.—The 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan shall, by the later of October 1, 1992, or the twentieth day after the enactment date, provide to the Secretary of Health and Human Services a list of the names and social security account numbers of each eligible beneficiary, including each deceased eligible beneficiary if any other individual is an eligible beneficiary by reason of a relationship to such deceased eligible beneficiary. In addition, the plans shall provide, where ascertainable from plan records, the names of all persons described in subsection (a) with respect to any eligible beneficiary or deceased eligible beneficiary.

"(d) COOPERATION BY OTHER AGENCIES AND PERSONS.—

"(1) COOPERATION.—The head of any department, agency, or instrumentality of the United States shall cooperate fully and promptly with the Secretary of Health and Human Services in providing information which will enable the Secretary to carry out his responsibilities under this section.

"(2) PROVIDING OF INFORMATION.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, including section 6103, the head of any other agency, department, or instrumentality shall, upon receiving a written request from the Secretary of Health and Human Services in connection with this section, cause a search to be made of the files and rec-

ords maintained by such agency, department, or instrumentality with a view to determining whether the information requested is contained in such files or records. The Secretary shall be advised whether the search disclosed the information requested, and, if so, such information shall be promptly transmitted to the Secretary, except that if the disclosure of any requested information would contravene national policy or security interests of the United States, or the confidentiality of census data, the information shall not be transmitted and the Secretary shall be so advised.

"(B) LIMITATION.—Any information provided under subparagraph (A) shall be limited to information necessary for the Secretary to carry out his duties under this section.

"(3) TRUSTEES.—The trustees of the Combined Fund, the 1950 UMWA Benefit Plan, the 1974 UMWA Benefit Plan, the 1950 UMWA Pension Plan, and the 1974 UMWA Pension Plan shall fully and promptly cooperate with the Secretary in furnishing, or assisting the Secretary to obtain, any information the Secretary needs to carry out the Secretary's responsibilities under this section.

"(e) NOTICE BY SECRETARY.—

"(1) NOTICE TO FUND.—The Secretary of Health and Human Services shall advise the trustees of the Combined Fund of the name of each person identified under this section as an assigned operator, and the names and social security account numbers of eligible beneficiaries with respect to whom he is identified.

"(2) OTHER NOTICE.—The Secretary of Health and Human Services shall notify each assigned op-

erator of the names and social security account numbers of eligible beneficiaries who have been assigned to such person under this section and a brief summary of the facts related to the basis for such assignments.

"(f) RECONSIDERATION BY SECRETARY.—

"(1) IN GENERAL.—Any assigned operator receiving a notice under section (e)(2) with respect to an eligible beneficiary may, within 30 days of receipt of such notice, request from the Secretary of Health and Human Services detailed information as to the work history of the beneficiary and the basis of the assignment.

"(2) REVIEW.—An assigned operator may, within 30 days of receipt of the information under paragraph (1), request review of the assignment. The Secretary of Health and Human Services shall conduct such review if the Secretary finds the operator provided evidence with the request constituting a prima facie case of error.

"(3) RESULTS OF REVIEW.—

"(A) ERROR.—If the Secretary of Health and Human Services determines under a review under paragraph (2) that an assignment was in error—

"(i) the Secretary shall notify the assigned operator and the trustees of the Combined Fund and the trustees shall reduce the premiums of the operator under section 9704 by (or if there are no such premiums, repay) all premiums paid under section 9704 with respect to the eligible beneficiary, and

"(ii) the Secretary shall review the beneficiary's record for reassignment under subsection (a).

"(B) NO ERROR.—If the Secretary of Health and Human Services determines under a review conducted under paragraph (2) that no error occurred, the Secretary shall notify the assigned operator.

"(4) DETERMINATIONS.—Any determination by the Secretary of Health and Human Services under paragraph (2) or (3) shall be final.

"(5) PAYMENT PENDING REVIEW.—An assigned operator shall pay the premiums under section 9704 pending review by the Secretary of Health and Human Services or by a court under this subsection.

"(6) PRIVATE ACTIONS.—Nothing in this section shall preclude the right of any person to bring a separate civil action against another person for responsibility for assigned premiums, notwithstanding any prior decision by the Secretary.

"(g) CONFIDENTIALITY OF INFORMATION.—Any person to which information is provided by the Secretary of Health and Human Services under this section shall not disclose such information except in any proceedings related to this section. Any civil or criminal penalty which is applicable to an unauthorized disclosure under section 6103 shall apply to any unauthorized disclosure under this section.

"PART III—ENFORCEMENT

"Sec. 9707. Failure to Pay Premium.

"(a) GENERAL RULE.—There is hereby imposed a penalty on the failure of any assigned operator to pay any premium required to be paid under section 9704 with respect to any eligible beneficiary.

"(b) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) on any failure with respect to any eligible beneficiary shall be $100 per day

in the noncompliance period with respect to any such failure.

"(c) NONCOMPLIANCE PERIOD.—For purposes of this section, the term 'noncompliance period' means, with respect to any failure to pay any premium or installment thereof, the period—

"(1) beginning on the due date for such premium or installment, and

"(2) ending on the date of payment of such premium or installment.

"(d) LIMITATIONS ON AMOUNT OF PENALTY.—

"(1) IN GENERAL.—No penalty shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary of the Treasury that none of the persons responsible for such failure knew, or exercising reasonable diligence, would have known, that such failure existed.

"(2) CORRECTIONS.—No penalty shall be imposed by subsection (a) on any failure if—

"(A) such failure was due to reasonable cause and not to willful neglect, and

"(B) such failure is corrected during the 30-day period beginning on the 1st date that any of the persons responsible for such failure knew, or exercising reasonable diligence would have known, that such failure existed.

"(3) WAIVER.—In the case of a failure that is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive all or part of the penalty imposed by subsection (a) for failures to the extent that the Secretary determines, in his sole discretion, that the payment of such penalty would be excessive relative to the failure involved.

"(e) LIABILITY FOR PENALTY.—The person failing to meet the requirements of section 9704 shall be liable for the penalty imposed by subsection (a).

"(f) TREATMENT.—For purposes of this title, the penalty imposed by this section shall be treated in the same manner as the tax imposed by section 4980B.

"PART IV—OTHER PROVISIONS

"Sec. 9708. Effect on Pending Claims or Obligations.

"All liability for contributions to the Combined Fund that arises on and after February 1, 1993, shall be determined exclusively under this chapter, including all liability for contributions to the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for coal production on and after February 1, 1993. However, nothing in this chapter is intended to have any effect on any claims or obligations arising in connection with the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, including claims or obligations based on the 'evergreen' clause found in the language of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan. This chapter shall not be construed to affect any rights of subrogation of any 1988 agreement operator with respect to contributions due to the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan as of February 1, 1993.

"Subchapter C—Health Benefits of Certain Miners

"PART I—INDIVIDUAL EMPLOYER PLANS

"Sec. 9711. Continued Obligations of Individual Employer Plans.

"(a) COVERAGE OF CURRENT RECIPIENTS.—The last signatory operator of any individual who, as of February 1, 1993, is receiving retiree health benefits from an in-

dividual employer plan maintained pursuant to a 1978 or subsequent coal wage agreement shall continue to provide health benefits coverage to such individual and the individual's eligible beneficiaries which is substantially the same as (and subject to all the limitations of) the coverage provided by such plan as of January 1, 1992. Such coverage shall continue to be provided for as long as the last signatory operator (and any related person) remains in business.

"(b) COVERAGE OF ELIGIBLE RECIPIENTS.—

"(1) IN GENERAL.—The last signatory operator of any individual who, as of February 1, 1993, is not receiving retiree health benefits under the individual employer plan maintained by the last signatory operator pursuant to a 1978 or subsequent coal wage agreement, but has met the age and service requirements for eligibility to receive benefits under such plan as of such date, shall, at such time as such individual becomes eligible to receive benefits under such plan, provide health benefits coverage to such individual and the individual's eligible beneficiaries which is described in paragraph (2). This paragraph shall not apply to any individual who retired from the coal industry after September 30, 1994, or any eligible beneficiary of such individual.

"(2) COVERAGE.—Subject to the provisions of subsection (d), health benefits coverage is described in this paragraph if it is substantially the same as (and subject to all the limitations of) the coverage provided by the individual employer plan as of January 1, 1992. Such coverage shall continue for as long as the last signatory operator (and any related person) remains in business.

"(c) JOINT AND SEVERAL LIABILITY OF RELATED PERSONS.—Each related person of a last signatory operator to which subsection (a) or (b) applies shall be

jointly and severally liable with the last signatory operator for the provision of health care coverage described in subsection (a) or (b).

"(d) MANAGED CARE AND COST CONTAINMENT.—The last signatory operator shall not be treated as failing to meet the requirements of subsection (a) or (b) if benefits are provided to eligible beneficiaries under managed care and cost containment rules and procedures described in section 9712(c) or agreed to by the last signatory operator and the United Mine Workers of America.

"(e) TREATMENT OF NONCOVERED EMPLOYEES.—The existence, level, and duration of benefits provided to former employees of a last signatory operator (and their eligible beneficiaries) who are not otherwise covered by this chapter and who are (or were) covered by a coal wage agreement shall only be determined by, and shall be subject to, collective bargaining, lawful unilateral action, or other applicable law.

"(f) ELIGIBLE BENEFICIARY.—For purposes of this section, the term 'eligible beneficiary' means any individual who is eligible for health benefits under a plan described in subsection (a) or (b) by reason of the individual's relationship with the retiree described in such subsection (or to an individual who, based on service and employment history at the time of death, would have been so described but for such death).

"(g) RULES APPLICABLE TO THIS PART AND PART II.—For purposes of this part and part II—

"(1) SUCCESSOR.—The term 'last signatory operator' shall include a successor in interest of such operator.

"(2) REASSIGNMENT UPON PURCHASE.—If a person becomes a successor of a last signatory operator after the enactment date, the last signatory operator may transfer any liability of such operator under this chapter with respect to an eligible beneficiary to such

successor, and such successor shall be treated as the last signatory operator with respect to such eligible beneficiary for purposes of this chapter. Notwithstanding the preceding sentence, the last signatory operator transferring such assignment (and any related person) shall remain the guarantor of the benefits provided to the eligible beneficiary under this chapter. A last signatory operator shall notify the trustees of the 1992 UMWA Benefit Plan of any transfer described in this paragraph.

"PART II—1992 UMWA BENEFIT PLAN

"Sec. 9712. Establishment and Coverage of 1992 UMAW Benefit Plan.

"(a) CREATION OF PLAN.—

"(1) IN GENERAL.—As soon as practicable after the enactment date, the settlors shall create a separate private plan which shall be known as the United Mine Workers of America 1992 Benefit Plan. For purposes of this title, the 1992 UMWA Benefit Plan shall be treated as an organization exempt from taxation under section 501(a). The settlors shall be responsible for designing the structure, administration and terms of the 1992 UMWA Benefit Plan, and for appointment and removal of the members of the board of trustees. The board of trustees shall initially consist of five members and shall thereafter be the number set by the settlors.

"(2) TREATMENT OF PLAN.—The 1992 UMWA Benefit Plan shall be—

"(A) a plan described in section 302(c)(5) of the Labor Management Relations Act, 1947 (29 U.S.C. 186(c)(5)).

"(B) an employee welfare benefit plan within the meaning of section 3(1) of the Employee

Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)), and

"(C) a multiemployer plan within the meaning of section 3(37) of such Act (29 U.S.C. 1002(37)).

"(b) COVERAGE REQUIREMENT.—

"(1) IN GENERAL.—The 1992 UMWA Benefit Plan shall only provide health benefits coverage to any eligible beneficiary who is not eligible for benefits under the Combined Fund and shall not provide such coverage to any other individual.

"(2) ELIGIBLE BENEFICIARY.—For purposes of this section, the term 'eligible beneficiary' means an individual who—

"(A) but for the enactment of this chapter, would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, based upon age and service earned as of February 1, 1993; or

"(B) with respect to whom coverage is required to be provided under section 9711, but who does not receive such coverage from the applicable last signatory operator or any related person,

and any individual who is eligible for benefits by reason of a relationship to an individual described in subparagraph (A) or (B). In no event shall the 1992 UMWA Benefit Plan provide health benefits coverage to any eligible beneficiary who is a coal industry retiree who retired from the coal industry after September 30, 1994, or any beneficiary of such individual.

"(c) HEALTH BENEFITS.—

"(1) IN GENERAL.—The 1992 UMWA Benefit Plan shall provide health care benefits coverage to each eligible beneficiary which is substantially the same as (and subject to all the limitations of) coverage provided under the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of January 1, 1992.

"(2) MANAGED CARE.—The 1992 UMWA Benefit Plan shall develop managed care and cost containment rules which shall be applicable to the payment of benefits under this subsection. Application of such rules shall not cause the plan to be treated as failing to meet the requirements of this subsection. Such rules shall preserve freedom of choice while reinforcing managed care network use by allowing a point of service decision as to whether a network medical provider will be used. Major elements of such rules may include, but are not limited to, elements described in paragraph (3).

"(3) MAJOR ELEMENTS OF RULES.—Elements described in this paragraph are—

"(A) implementing formulary for drugs and subjecting the prescription program to a rigorous review of appropriate use,

"(B) obtaining a unit price discount in exchange for patient volume and preferred provider status with the amount of the potential discount varying by geographic region,

"(C) limiting benefit payments to physicians to the allowable charge under title XVIII of the Social Security Act, while protecting beneficiaies from balance billing by providers,

"(D) utilizing, in the claims payment function 'appropriateness of service' protocols under

title XVIII of the Social Security Act if more stringent,

"(E) creating mandatory utilization review (UR) procedures, but placing the responsibility to follow such procedures on the physician or hospital, not the beneficiaries,

"(F) selecting the most efficient physicians and state-of-the-art utilization management techniques, including ambulatory care techniques, for medical services delivered by the managed care network, and

"(G) utilizing a managed care network provider system, as practiced in the health care industry, at the time medical services are needed (point-of-service) in order to receive maximum benefits available under this subsection.

"(4) LAST SIGNATORY OPERATORS.—The board of trustees of the 1992 UMWA Benefit Plan shall permit any last signatory operator required to maintain an individual employer plan under section 9711 to utilize the managed care and cost containment rules and programs developed under this subsection if the operator elects to do so.

"(5) STANDARDS OF QUALITY.—Any managed care system or cost containment adopted by the board of trustees of the 1992 UMWA Benefit Plan or by a last signatory operator may not be implemented unless it is approved by, and meets the standards of quality adopted by, a medical peer review panel, which has been established—

"(A) by the settlors, or

"(B) by the United Mine Workers of America and a last signatory operator or group of operators.

Standards of quality shall include accessibility to medical care, taking into account that accessibility requirements may differ depending on the nature of the medical need.

"(d) GUARANTEE OF BENEFITS.—

"(1) IN GENERAL.—All 1988 last signatory operators shall be responsible for financing the benefits described in subsection (c), in accordance with contribution requirements established in the 1992 UMWA Benefit Plan. Such contribution requirements, which shall be applied uniformly to each 1988 last signatory operator, on the basis of the number of eligible and potentially eligible beneficiaries attributable to each operator, shall include:

"(A) the payment of an annual prefunding premium for all eligible and potentially eligible beneficiaries attributable to a 1988 last signatory operator,

"(B) the payment of a monthly per beneficiary premium by each 1988 last signatory operator for each eligible beneficiary of such operator who is described in subsection (b)(2) and who is receiving benefits under the 1992 UMWA Benefit Plan, and

"(C) the provision of security (in the form of a bond, letter of credit or cash escrow) in an amount equal to a portion of the projected future cost to the 1992 UMWA Benefit Plan of providing health benefits for eligible and potentially eligible beneficiaries attributable to the 1988 last signatory operator. If a 1988 last signatory operator is unable to provide the security required, the 1992 UMWA Benefit Plan shall require the operator to pay an annual prefunding premium that is greater than the premium otherwise applicable.

"(2) ADJUSTMENTS.—The 1992 UMWA Benefit Plan shall provide for—

"(A) annual adjustments of the per beneficiary premium to cover changes in the cost of providing benefits to eligible beneficiaries, and

"(B) adjustments as necessary to the annual prefunding premium to reflect changes in the cost of providing benefits to eligible beneficiaries for whom per beneficiary premiums are not paid.

"(3) ADDITIONAL LIABILITY.—Any last signatory operator who is not a 1988 last signatory operator shall pay the monthly per beneficiary premium under paragraph (1)(B) for each eligible beneficiary described in such paragraph attributable to that operator.

"(4) JOINT AND SEVERAL LIABILITY.—A 1988 last signatory operator or last signatory operator described in paragraph (3), and any related person to any such operator, shall be jointly and severally liable with such operator for any amount required to be paid by such operator under this section.

"(5) DEDUCTIBILITY.—Any premium required by this section shall be deductible without regard to any limitation on deductibility based on the prefunding of health benefits.

"(6) 1988 LAST SIGNATORY OPERATOR.—For purposes of this section, the term '1988 last signatory operator' means a last signatory operator which is a 1988 agreement operator.

"Subchapter D—Other Provisions

"Sec. 9721. Civil Enforcement.

"The provisions of section 4301 of the Employee Retirement Income Security Act of 1974 shall apply to any claim arising out of an obligation to pay any amount required to be paid by this chapter in the same manner as any claim arising out of an obligation to pay withdrawal liability under subtitle E of title IV of such Act. For purposes of the preceding sentence, a signatory operator and related persons shall be treated in the same manner as employers.

"Sec. 9722. Sham Transactions.

"If a principal purpose of any transaction is to evade or avoid liability under this chapter, this chapter shall be applied (and such liability shall be imposed) without regard to such transaction."

(b) AMENDMENTS TO SURFACE MINING ACT.—

(1) EXTENSION OF FEE PROGRAM.—Section 402 (b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(b)) is amended by striking "September 30, 1995" and inserting "September 30, 2004".

(2) TRANSFER TO FUND.—Section 402 of such Act (30 U.S.C. 1232) is amended by adding at the end the following new subsection:

"(h) TRANSFER OF FUNDS TO COMBINED FUND.—(1) In the case of any fiscal year beginning on or after October 1, 1995, with respect to which fees are required to be paid under this section, the Secretary shall, as of the beginning of such fiscal year and before any allocation under subsection (g), make the transfer provided in paragraph (2).

"(2) The Secretary shall transfer from the fund to the United Mine Workers of America Combined Benefit Fund established under section 9702 of the Internal Rev-

enue Code of 1986 for any fiscal year an amount equal to the sum of—

"(A) the amount of the interest which the Secretary estimates will be earned and paid to the Fund during the fiscal year, plus

"(B) the amount by which the amount described in subparagraph (A) is less than $70,000,000.

"(3)(A) The aggregate amount which may be transferred under paragraph (2) for any fiscal year shall not exceed the amount of expenditures which the trustees of the Combined Fund estimate will be debited against the unassigned beneficiaries premium account under section 9704(e) of the Internal Revenue Code of 1986 for the fiscal year of the Combined Fund in which the transfer is made.

"(B) The aggregate amount which may be transferred under paragraph (2)(B) for all fiscal years shall not exceed an amount equivalent to all interest earned and paid to the fund after September 30, 1992, and before October 1, 1995.

"(4) If, for any fiscal year, the amount transferred is more or less than the amount required to be transferred, the Secretary shall appropriately adjust the amount transferred for the next fiscal year."

(3) CONFORMING AMENDMENTS.—(A) Section 401(c) of such Act (30 U.S.C. 1231(c)) is amended by striking "and" at the end of paragraph (11), by redesignating paragraph (12) as paragraph (13), and by adding after paragraph (11) the following new paragraph:

"(12) for the purpose described in section 402 (h); and".

(B) Section 402(g)(1) of such Act (30 U.S.C. 1232(g)) is amended by striking "Moneys" and inserting "Except as provided in subsection (h), moneys".